IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2566 of 2006
with
FIRST APPEAL No. 2567 of 2006
to
FIRST APPEAL No. 2571 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER - Appellant(s)
Versus
PRAMILABEN FAJUJI W/D OF RAJUJI & 4 - Respondent(s)

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Appearance :
MR SS PATEL, AGP for Appellant(s) : 1,
MR KAMLESH SHETH for Respondent(s)-Claimant(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 22/08/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Kamlesh Sheth, learned counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Mr.S.S.Patel, learned Assistant Government Pleader, states at the Bar that interest of the appellant and that of the respondent No.2 is identical and is not in conflict at all. In view of the statement made at the Bar, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these Appeals upon the respondent No.2. Having regard to the facts of the case, all the abovenumbered Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, the appellant, i.e. the

Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad, has challenged the legality of common judgment and award dated December 10, 2003, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.79 of 2001 to 84 of 2001, by which the claimants are awarded additional compensation at the rate of Rs.78/- per sq.mt. over and above the compensation awarded to them at the rate of Rs.5.40 ps. per sq.mt. by the Special Land Acquisition Officer for their acquired lands.

3. The Executive Engineer, Narmada Project, Division No.13, Gandhinagar, proposed to the State Government to acquire agricultural lands of village Ranasan, Taluka: Gandhinagar, District: Gandhinagar, for public purpose of construction of Narmada Canal. On consideration of the said proposal, the State Government was satisfied that agricultural lands of village Ranasan were

likely to be needed for the said public purpose. Therefore, Notification under Section 4 of the Act was issued which was published in the official gazette on December 19, 1994. The owners of the lands were thereafter served with notices under Section 4 of the Act. They objected to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Ranasan, which were specified in the Notification published under Section 4 of the Act, were needed for public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on July 29, 1995. The interested persons were thereafter served with notices for determination of the compensation payable to them. The claimants

appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated February 28, 1996, offered compensation to the claimants at the rate of Rs.5.40 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were numbered as noticed earlier.

4. On behalf of the claimants, witness Virambhai Lalabhai was examined at Ex.34. Over and above stating that the lands acquired were

highly fertile, it was mentioned by the said witness that each claimant was taking three crops in a year and each claimant was earning the net profit of Rs.49,000/- to Rs.56,000/- per Vigha per year from the sale of agricultural produces. It was asserted by the said witness that earlier, lands belonging to other farmers were acquired from his village for the public purpose of establishment of 220 KV Station by GEB at Ranavav, for which, Notification under Section 4 of the Act was published on March 10, 1983, and the claimants were awarded additional compensation at the rate of Rs.34.50 ps. per sq.mt. by the Reference Court in Land Acquisition Reference No.107 of 1987 and other cognate matters, over and above the compensation of Rs.2.50 ps. per sq.mt. awarded to them by the Special Land Acquisition Officer. According to the said witness, the lands acquired from his village earlier and the lands acquired in the instant case were similar in all respects, and

therefore, they were entitled to compensation on the basis of previous award of the Reference Court relating to the lands of this very village. It was maintained by the said witness that the award of the Reference Court rendered in Land Acquisition Reference No.107 of 1987 and other cognate matters was challenged before the High Court by the acquiring authorities in First Appeal No.1976 of 1995, which was dismissed on October 18, 1995, by Division Bench comprising N.J.Pandya and S.K.Keshote, JJ. What was pointed out by the said witness in his testimony was that industrial and residential growth had taken place near the acquired lands and therefore, the claimants were entitled to enhanced compensation.

5. This witness was cross examined by the learned District Government Pleader. In his cross-examination, it was admitted by him that he was not having any Power of Attorney in his favour to depose on behalf of other

claimants. It was also admitted by him that the claimants were not able to produce any purchase or sale bills to support the claim that each claimant was earning the income of Rs.49,000/- to Rs.56,000/- per Vigha per year from sale of agricultural produces. The witness had also admitted that Torrent and Plaza were not situated in village Ranasan. In cross-examination by learned advocate for the acquiring body, it was mentioned by the witness that no accounts were maintained by any of the claimants regarding the income derived from the sale of agricultural produces.

6. The claimants produced the following documentary evidence vide list Ex.21 and 32 which were admitted in the evidence with the consent of the appellant and the acquiring body:

(i) Exs.22 to 29 – Copies of Village Form No.7/12,

(ii) Ex.30 – Judgment in Land Acquisition Case No.107 of 1987 relating to the lands of village Ranasan,

(iii) Ex.33 – Judgment in Land Acquisition Reference No.276 of 1994 delivered by the Reference Court with reference to the lands of village Ranasan, and

(iv) Ex.32 – Judgment of the High Court in First Appeal No.1976 of 1995.

7. It may be mentioned that neither any witness was examined nor any documentary evidence was produced on behalf of the appellant or on behalf of the acquiring body inspite of sufficient opportunity having been afforded to them.

8. On consideration of the evidence adduced by the claimants, the learned Judge of the trial Court noticed that the judgment delivered by the Reference Court in Land Acquisition

Reference No.276 of 1994 produced at Ex.33 had become final as the same was not challenged before the higher forum. According to the learned Judge of the Reference Court, the previous award of the Reference Court rendered in Land Acquisition Reference No.276 of 1994 was nearer to the date of publication of Notification in the present case than the Notification issued in Land Acquisition Reference No.107 of 1987, copy of which was produced at Ex.30, and therefore, previous award of the Reference court relating to the lands of village Ranasan rendered in Land Acquisition Reference No.276 of 1994 furnished good guidance for the purpose of assessing the market value of the lands acquired in the instant case. The previous award of the Reference Court rendered in Land Acquisition Reference No.276 of 1994 indicated that therein, Notification under Section 4(1) of the Act was published on May 9, 1986, and the claimants in that case were awarded compensation at the rate of Rs.45/-

per sq.mt. including the compensation awarded to them by the Special Land Acquisition Officer, whereas in the present case, Notification under Section 4 of the Act was published in the official gazette on December 19, 1994, and therefore, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has held that the claimants are entitled to additional compensation at the rate of Rs.78/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer, by the impugned judgment and award, giving rise to the abovenumbered Appeals.

9. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellant as well as Mr.Kamlesh Sheth, learned counsel for the claimant/claimants in each Appeal. This Court has also considered the oral as well as documentary evidence

produced by the learned counsel for the parties for perusal.

10. From the record of the case, it is evident that no sale-deed was produced by the claimants for the purpose of claiming enhanced compensation. No evidence could be adduced by the claimants to substantiate the claim that each claimant was earning Rs.49,000/- to Rs.56,000/- per Vigha per year from the sale of agricultural produces nor the enhanced compensation was claimed on yield basis. The claimants had placed reliance on two previous awards of the Reference court relating to the lands of this very village in support of their claim for enhanced compensation. On appreciation of evidence, the Reference Court has held that the previous award of the Reference Court in Land Acquisition Reference No.276 of 1994 furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The reasons

given by the Reference Court for the purpose of relying upon the previous award of the Reference Court rendered in Land Acquisition Reference No.276 of 1994 are to be found in paragraph-13 of the impugned judgment with which this Court fully concurs. The previous award of the Reference Court in Land Acquisition Reference No.276 of 1994 is nearer to the date of publication of Notification issued under Section 4(1) of the Act in the present case than the Notification issued under Section 4(1) of the Act in Land Acquisition Reference No.107 of 1987. Under the circumstances, the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of this very village rendered in Land Acquisition Reference No.276 of 1994 for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that previous award of the Reference Court relating to the lands of the same village, which has attained finality,

can be relied upon for the purpose of determining the market value of the lands acquired subsequently from the same village. On re-appreciation of the facts, this court finds that correct findings of fact have been recorded by the Reference Court on appreciation of evidence adduced by the claimants and correct principles of law have been applied to the proved facts. The calculation of amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of this very village could not be demonstrated to be erroneous by the learned counsel for the appellant. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the appellant to interfere with the impugned award in the instant Appeals and therefore, the Appeals, which lack merit, deserve to be dismissed.

11. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this Judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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